

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1050 of 1998

in

SPECIAL CIVIL APPLICATION No 6668 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER Sd/-

AND

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 2 Yes. Nos. 3 to 5 No.

STATE OF GUJARAT

Versus

VISHNU AUTOMOBILES

THRO' HEMENDRABHAI

Appearance:

MR PRASHANT G.DESAI, GOVERNMENT PLEADER for Appellants

MR Y.N.OZA FOR MR H.R. PRAJAPATI for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.M.KAPADIA

Date of decision: 29/09/98

ORAL JUDGEMENT

(Per C.K.Thakker,J)

Admitted. In the facts and circumstances of the case and at the request of the learned Counsel appearing in the matter, the appeal is taken up for final hearing today.

This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 6668 of 1998 on August 20,1998.

Respondent Vishnu Automobiles was the original petitioner. It filed the above petition for issuing an appropriate writ, order or direction quashing and setting aside an order of seizure dated August 11,1998 passed by Additional Controller, Food and Civil Supplies Department, being illegal, ultra vires, unconstitutional and directing the respondent authorities to reverify the existing stock of petrol sealed in underground petrol tank by removing seals in presence of the petitioner and two independent witnesses.

Rule was issued by the learned Single Judge and the matter was taken up for final hearing. After hearing the parties the learned Single Judge passed the following order :

"Leave to place on record copies of the panchnamas dated 25.12.1996 and 1.2.1997 with respect to the case of Bhagwati Petroleum.

2. Rule. Service of rule waived by Mr.V.B.Gharania, Ld.AGP for the respondents.

3. Mr.A.S.Rathod, concerned Inspector is present in the Court. Under the instructions from the said Inspector and after verifying the panchnamas dated 25.12.96 and 1.2.97 in respect of Bhagwati Petroleum. Mr.Gharania, Ld.AGP submits that without prejudice to the stand of the State Government concerning the seizure in question, appropriate direction may be issued for rechecking of the petrol pump in question after opening of the seals and making a panchnama in respect of such rechecking. Mr.Prajapati, learned Advocate appearing for the petitioner has no objection for issuing such a direction without prejudice to the stand of the State Government in respect of seizure in question. Mr.Prajapati

also submits that the petitioner will cooperate in the inquiry proceedings before the concerned authority of the respondents. In that view of the matter and bearing in mind the facts of the case following direction is issued :-

The concerned authority of the respondents will visit the petrol pump in question after prior intimation to the petitioner in presence of the Panchas and after attending to the formalities inspect the petrol pump in question and make a fresh Panchas with regard to such inspection. The necessary intimation shall be given by the concerned authority of the respondent to the petitioner within a period of 10 days from the date of receipt of writ of this direction. No further or other direction is required to be issued in this matter.

Subject to the aforesaid direction, rule is discharged. No order as to cost".

Being aggrieved by the above judgment and order of the learned Single Judge, the present Letters Patent Appeal is filed by the State of Gujarat and Collector, Ahmedabad.

The case of the department was that there was Vishnu Petrol Pump, near Ramol Char Rasta, Ahmedabad. One Hamendra Gordhanbhai Patel was carrying on business of selling petrol and diesel under licence bearing No.273 in the name and style of "Vishnu Automobiles". On August 11,1998, neither the owner of the petrol pump Gordhanbhai Patel, nor the Manager Ravindrabhai Patel was present at the petrol pump. Mr.Jashvantsinh Raol, who was serving as Cashier was there. At about 00.30 a.m., the said petrol pump was inspected by inspecting staff of Civil Supplies Department and certain irregularities were found. Those irregularities have been mentioned in an order of seizure passed on the same day. It was inter alia alleged in the said order that at the time of inspection of petrol tank, one tanker bearing No.GJ-1-TT 5427 was there containing solvent which was added in petrol and the said activity was actually going on. Out of 14000 liters of solvent in the tanker, 12450 liters solvent had already been poured in petrol tank while remaining 1550 liters of solvent was found in the tanker. Thus, there was excess of petrol and short fall of solvent in the solvent tanker. According to the department thus solvent was added in petrol. It was also alleged that true and correct accounts of petrol and

diesel were not maintained by the petitioner, that 14000 liters solvent was unauthorisedly purchased, that neither bills and octroi receipts were produced nor names and addresses were supplied as to from which place and from whom such solvent was purchased. Regarding density, it was alleged that it was not in accordance with prescribed standards and variation was much more than permissible in law. The petrol pump was managed by an unauthorised person, petrol storage licence was not renewed after March 31,1997. Diesel storage licence was not produced at the time of inspection; etc.

In the light of those allegations, an order of seizure was passed against the petitioner as it had committed breach of provisions of the Motor Spirit and High Speed Diesel (Provisions of Malpractices and Supply in Distribution) Order 1990, as also the Gujarat Essential Articles Licence and Control Stock Declaration) Order, 1981 Seals were also applied.

Being aggrieved by the above order, the above petition was filed which came up for hearing before the learned Single Judge. From the order extracted above, it is clear that leave was granted by the learned Single Judge to place on record copies of panchnamas dated December 25,1996 and February 1,1997 of to Bhagwati Petroleum.

The learned Single Judge then observed that one Mr.A.S.Rathod, Inspector was present in the Court and under his instructions and after verifying the panchnamas dated December 25,1996 and December 1,1997 of Bhagwati Petroleum, it was submitted by the learned Assistant Government Pleader that "without prejudice to the stand of the State Government concerning the seizure in question, an appropriate direction may be issued for rechecking of the petrol pump in question after opening of the seals and making a panchnama in respect of such rechecking". Learned Single Judge also observed that "Mr.Prajapati, learned Advocate appearing for the petitioner has no objection for issuing such a direction without prejudice to the stand of the State Government in respect of seizure in question". Accordingly, the learned Single Judge issued direction to the effect that the respondent authorities will visit petrol pump in question "after prior intimation to the petitioner in presence of the panchas and after attending to the formalities inspect the petrol pump in question and make a fresh panchnama with regard to such inspection". Subject to the aforesaid direction rule was "discharged" and the petition was disposed of.

The above order is challenged by the authorities by filing the present Letters Patent Appeal.

We have heard at considerable length Mr.Prashant G.Desai, learned Government Pleader for the appellants and Mr.Y.N.Oza instructed by Mr.Prajapati, learned Counsel for original petitioner.

Mr.Desai raised the following contentions :

- [1] Though the learned Single Judge has stated that rule was "discharged", in fact, rule was made absolute inasmuch as the petition was allowed.
- [2] The learned Single Judge could not have passed the order directing the authorities to prepare fresh panchnama when panchnama was already prepared in presence of the party and panchas.
- [3] The inspection carried out by the authorities was successful and the persons were caught red handed adding solvent in petrol tank.
- [4] By issuing a direction that fresh panchnama will be prepared by the authority "after prior intimation to the petitioner in presence of panchas", virtually the learned Single Judge has permitted the petitioner to get intimation and opportunity well in advance. If it is permitted, the entire object of carrying out inspection would be frustrated.
- [5] Neither the Inspector nor the learned Assistant Government Pleader could have made concession. The action was of adulteration was against the public at large and no direction could have been issued against public interest by the learned Single Judge.
- [6] The case of Bhagwati Petroleum was not similar to the case of the petitioner. In Bhagwati Petroleum, at the time of inspection, adulterating activities were not going on.
- [7] In Bhagwati Petroleum, the report of Forensic Science Laboratory was in favour of the owner as the sample was not found to be adulterated. It was the Government who wanted fresh sample for analysis. The analogy of Bhagwati Petroleum,

therefore, could not have been applied by the petitioner and could not have been made basis for passing the impugned order.

[8] In any case, when this Court is hearing Letters Patent Appeal, subsequent events also must be considered by the Court. It is that the sample taken by the department was sent for analysis to FSL and the report of FSL shows that it did not conform the prescribed parameters and standards.

On all these grounds, Mr.Desai submitted that the order passed by the learned Single Judge deserves interference and requires to be quashed and set aside.

Mr.Oza, learned Counsel for the respondent-original petitioner, on the other hand, supported the order passed by the learned Single Judge.

[1] He raised a preliminary objection against maintainability of appeal on the ground that the petition was disposed of on a statement/concession made by the Assistant Government Pleader in charge of the Court after taking instructions from the Inspector who was present in the Court. No appeal lies against such order.

[2] In the alternative, Mr.Oza submitted that if the authorities were of the opinion that either the officer was not authorised to give instructions to the Assistant Government Pleader or the Assistant Government Pleader could not have made a statement, an appropriate course available to the appellants was to file an application for review of the order passed by the learned Single Judge. Only thereafter, if the appellants are aggrieved, they can approach this Court by filing an appeal.

[3] Even on merits, the case of Bhagwati Petroleum cannot be said to be different from the case of the petitioner. The Counsel submitted that in Bhagwati Petroleum, as per FSL report, the sample was not found adulterated but it was again sent for analysis by the State Government. The fact, however, remains that such power exists in the

authorities and when a power is vested in the authority, it can always be exercised in appropriate cases. When the learned Single Judge exercised the power, it cannot be said that it requires interference by this Court.

[4] The learned Single Judge has not committed any error of law in issuing the directions in question. The only direction issued by the learned Single Judge is to take sample of petrol again and get it analysed. Such order cannot be said to be unlawful. It is in accordance with doctrine of justice, equity and good conscience and needs no interference.

Having given anxious consideration to the facts and circumstances of the case, in our opinion, the appeal deserves to be allowed. So far as the maintainability of appeal is concerned, our attention was invited to sub-section (1) of Section 96 of the Code of Civil Procedure, 1908 which provides that "Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court". Sub-section (3) of Section 96 however, engrafts an exception to the general rule laid down in sub-section (1). Sub-section (3) states that "No appeal shall lie from a decree passed by the Court with the consent of parties".

The Counsel for the petitioner contended that in the instant case, an order was passed and judgment was pronounced pursuant to a statement made by the learned Assistant Government Pleader under the instructions of the Inspector, which is in the nature of "consent decree" and, hence, it was not appealable. Our attention was invited to the following decisions ;

[1] Katikara Chintamani Dora and others Vs.
Guatreddi Annamaniaidu and others, AIR 1974 SC
1069,

[2] Isac Osman and others Vs. Valimohmad Isac; AIR
1968 Guj.301,

[3] Munnaluri Venkateswarly and Another Vs. Vaddula
Narasi Reddy and Another, AIR 1961 AP 71,

[4] Smt.Raksha Rani Vs. Ram Lal, AIR 1987 P&H 60.

We are unable to appreciate the contention raised by the learned Counsel. Strict provisions of the Code of Civil Procedure do not apply to a petition under Article 226 of the Constitution as is clear from the Explanation to Section 141 of the Code of Civil Procedure. The said Explanation reads;

"In this section, the expression 'proceedings' includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution".

We may, however, hasten to add that the general principles of Code of Civil Procedure and decisions of the Hon'ble Supreme Court as well as of High Courts have to be considered while interpreting the provisions of Article 226 of the Constitution. But in the facts and circumstances of the case, in our opinion, the order passed by the learned Single Judge cannot be said to be an order in the nature of "consent decree" falling within the mischief of sub-section (3) of Section 96 of the Code; against which no appeal would lie. We, therefore, see no substance in the preliminary contention raised by the learned Counsel for the petitioner.

Mr.Oza submitted that even if the provisions of the Code of Civil Procedure do not apply to petitions under Article 226 of the Constitution, under the doctrine of promissory estoppel, it is not open to the respondent authorities first to instruct the Assistant Government Pleader and when the latter makes a statement on the basis of such instructions and an order is passed, to challenge such order.

We are not impressed by the said argument as well. In the case on hand, it was specifically stated by V.T.Bhabhor, Assistant Food Controller, in an affidavit dated September 14,1998 filed in the Letters Patent Appeal that the statement was made by the Inspector for rechecking as well as for making fresh panchnama was without authority. According to the deponent, once the sample of petrol was taken in presence of panchas, there was no need to recheck the petrol after opening the seals.

There is yet an important aspect. This Court

cannot be unmindful of the fact that after the sample was taken, it was sent for analysis to FSL. The report annexed to the affidavit in reply in the Letters Patent Appeal clearly shows that the sample did not conform the standard of petroleum product and presence of solvent was found. In view of the report, in our opinion, the matter relates to public policy in that there is violation of provisions of a statute. It is well settled that the doctrine of promissory estoppel has no application if it is against a statute or against public policy. Therefore, even if it is assumed for the sake of argument that the officer had authority to instruct the Assistant Government Pleader and in pursuance of such instructions a statement was made and the order was passed by the learned Single Judge, the doctrine of estoppel cannot be invoked and it was open to the authorities to challenge such order.

We are also of the view that the learned Single Judge has committed an error of law in relying upon the case of Bhagwati Petroleum. It was not a successful raid. In the instant case, it is the allegation of the authorities that at the time of inspection/raid, solvent was being added in petrol tank and at that time the petitioner was caught red handed. Necessary panchnama was drawn and even video film was prepared. Thus, the case of Bhagwati Petroleum was different and cannot be said to be at par with the case of the petitioner. Again, in Bhagwati Petroleum, the first report of FSL was in favour of the dealer but the State Government was not satisfied with that report and it wanted the sample to be reanalysed. In our opinion, the question is not whether the State Government has power to re-analyse the commodity but the real question is whether the learned Single Judge could have directed reanalysis. With respect, we are of the view that the learned Single Judge had no such power and by doing so, the learned Single Judge has exceeded his jurisdiction.

We are also in agreement with learned Government Pleader that though in the operative part of the order, it is stated that "rule is discharged" virtually, rule was made "absolute". The relief of making a fresh panchnama after prior intimation to the petitioner and after observing formalities and inspecting petrol pump in question, the petition was allowed. In our view, the grievance of the Government Pleader is well founded that the direction of learned Single Judge that "such samples are to be taken after prior intimation to the petitioner", an opportunity is extended to the petitioner to play mischief. If prior intimation is given to the

petitioner and samples are taken, the object of raid and/or inspection for deciding as to whether there was adulteration of the commodity would be frustrated.

For the foregoing reasons, in our opinion, the Letters Patent Appeal deserves to be allowed and is accordingly allowed. The order passed by the learned Single Judge is set aside and the petition is ordered to be dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

The learned Counsel for the petitioner states that the petitioner intends to approach higher forum. He, therefore, prays that limited interim relief may be granted, so that no consequential action in pursuance of seizure order may be taken for some time. We think that the prayer is reasonable. The respondent authorities are directed not to take consequential action pursuant to seizure order upto October 16,1998.

Order accordingly.

m.m.bhatt